



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ROSCO International Corporation

File: B-242079

Date: June 12, 1991

Daniel A. Bellman, Esq., Porter, Wright, Morris & Arthur, for the protester.

Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.

Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

BIGGEST

1. Defense Logistics Agency's award to a higher-priced offeror on its Quality Vendor List after performing a best value analysis is not objectionable where agency could reasonably find that higher probability of quality performance and timely delivery outweighed the modest price premium involved.

2. Protest that agency, as part of systematic effort to avoid awarding contracts to protester, improperly found protester, a small business, not responsible without making the mandatory referral to the Small Business Administration is denied where record does not establish that agency made an adverse responsibility determination.

DECISION

ROSCO International Corporation protests the award of a contract to Wheeler Brothers, Inc. under request for quotations (RFQ) No. DLA700-91-X-7897, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA), for brake shoe sets, national stock number (NSN) 2530-00-912-4341. ROSCO, a small business, contends that it should have received the award because it submitted the low quote. ROSCO argues, in this regard, that it was improperly denied the award on the basis of an adverse responsibility determination which was allegedly implemented by the agency through its Quality Vendor Program (QVP), without review by the Small Business Administration (SBA) under the certificate of competency (COC) procedures of the Small Business Act, 15 U.S.C. § 637(b)(7)(A) (1988).

We deny the protest.

The RFQ was issued on November 13, 1990, for 257 brake shoe sets to be installed in military vehicles. The solicitation included a clause entitled "Quality Vendor Program (QVP) (Competition for Performance)." This clause provided that the agency could pay up to a 20 percent price premium for items offered by vendors listed on the Quality Vendor List (QVL) for the applicable Federal Supply Class. Basically, the QVL consists of those vendors who, through an application process, have demonstrated a particular degree of dependable quality and delivery performance under Department of Defense (DOD) contracts during the 12 months prior to the procurement. According to the QVP clause, to appear on the QVL, an applicant must successfully demonstrate a 95 percent or higher on-time delivery rate under a minimum of \$10,000 in DOD award documents, and have delivered under at least 95 percent of all such award documents without valid Quality Deficiency Records or Reports of Discrepancy having been charged against the applicant.

The evaluation preference afforded by the QVL is not automatic. Rather, the contracting officer for the procurement must decide to apply the preference based upon a consideration of the following factors which are specified in the QVP clause: (1) whether the item is used in a weapons system; (2) the delivery and quality history of the item; (3) the inventory supply status of the item; (4) the required delivery schedule; (5) whether supply sources are limited; (6) the absolute dollar difference of offerors; (7) industrial base considerations; and (8) the existence of new offerors. If the determination is made to apply the QVP preference, the contracting officer is authorized to make an award to an offeror on the QVL at a price higher (by as much as 20 percent) than the price offered by the low, nonlisted offeror. However, as a prerequisite to making such an award, the contracting officer must also first determine that the additional expenditure will result in the government's receiving the best value for its money because of the enhanced level of quality and timely delivery expected from the QVL offeror.

Six quotes were submitted to the agency by the closing date of December 13, 1990. The low quote was received from Wheeler at \$13.48 per unit. ROSCO submitted the second-low quote at \$13.49 per unit, a penny per unit higher. Wheeler is listed on the applicable QVL, while ROSCO is not.

On January 17, 1991, the RFQ was redesignated as a "Desert Storm" procurement and the f.o.b. destination delivery points were changed from central locations within the United States to a single location in Saudi Arabia. As a result, the

contracting officer contacted Wheeler and requested a revised quote based upon the delivery point change. Wheeler responded by revising its quote upward to \$13.93 per unit. A revised quote was not requested from ROSCO because, according to the agency, it had decided to use the QVP preference and Wheeler's revised quote was acceptable under the QVP because it was only 3.26 percent higher than ROSCO's initial quote and it was anticipated that ROSCO's price would only increase, as did Wheeler's, in light of the foreign delivery requirement. The agency decided to apply the QVP because the brake shoe sets had been classified as items to be used in a weapon system, inventory was running low, and timely delivery was an important consideration as a result of the "Desert Storm" designation.

The contracting officer thereafter performed the "best value" analysis called for by the QVP clause by comparing Wheeler's revised quote with the original quote of ROSCO. The contracting officer concluded that it was worth paying a higher price to Wheeler considering the need for timely and reliable delivery. A purchase order was issued to Wheeler on January 18.

The protester contends that the agency was not justified in awarding the contract to Wheeler at a higher price. Two arguments are made in support of this contention. First, ROSCO maintains that the agency's decision to apply the QVP preference in favor of Wheeler was improper because ROSCO had recently been awarded a contract by DCSC for identical items. ROSCO in effect argues that the existence of this contract, which apparently has been successfully performed, discredits the reasonableness of the QVP best value analysis performed by the agency. Secondly, ROSCO argues that the use of the QVP preference was in furtherance of DLA's systematic refusal to award it other contracts by viewing it as a nonresponsible contractor. The protester rests this argument upon the existence of a DLA interoffice memorandum dated December 21, 1990, which references a civil complaint filed against ROSCO by the government and concludes with a recommendation that ROSCO be found not responsible for the purpose of extending or awarding DLA contracts. ROSCO submits that since it is a business, the matter should have been referred to the

We do not agree that DLA's best value analysis is unreasonable. That ROSCO was awarded and may have successfully performed another DCSC contract (awarded in a procurement in which the QVP was not used) for brake shoe sets does not change the fact that ROSCO is not on (and reportedly has not applied for) the QVP while Wheeler is, and that as a result DLA views Wheeler as offering a higher probability of quality performance and on-time delivery. Since the cost differential

in this case is not significant (the \$0.44 difference between Wheeler's revised quote and ROSCO's quote, a difference that the agency believed would largely disappear had ROSCO been given the opportunity to provide a revised quote, equates to a premium of \$113.08 on a contract price in the amount of \$3,580.01), we see nothing unreasonable^{1/} in the contracting officer's decision that an award to Wheeler represented a best value purchase. Cf. Retrac, B-241916, Mar. 1, 1991, 91-1 CPD ¶ 239, aff'd, Defense Logistic Agency--Recon., B-241916.2, May 10, 1991, 91-1 CPD ¶ _____, where we found a QVP best value analysis to be unreasonable.

As to the protester's second argument, the agency denies that it made an adverse responsibility determination. According to the agency, ROSCO's responsibility was never in issue because the firm was not in line for award at any time. Furthermore, the record includes an affidavit of the contracting officer in which she states that she had neither seen, nor had knowledge of, the memorandum recommending that ROSCO be found not responsible for DLA awards.

From the record presented, we cannot conclude that the agency denied award to ROSCO on the basis of an adverse responsibility determination. The contracting officer denies having made any responsibility determination as to ROSCO and denies being influenced by the memorandum concerning ROSCO, and there is no evidence that would lead us to question her veracity. Accordingly, and since we find the agency's best value analysis under the QVP to be reasonable, we cannot conclude that DLA used the QVP evaluation procedures in

^{1/} We do not agree that the contracting officer acted properly in not seeking a revised quote from ROSCO. Although the contracting officer assumed that ROSCO's price would increase and therefore getting a quote from ROSCO would serve no purpose in light of the decision to utilize the QVP, a contracting officer should not presume what the results of a competition would be--rather, a vendor's willingness to be competitive in the face of another vendor's advantage should be tested "in the crucible of competition." See Burton Myers Co., B-190723; B-190817, Apr. 13, 1978, 78-1 CPD ¶ 280; Olivetti Corp. of Am., B-187369, Feb. 28, 1977, 77-1 CPD ¶ 146. Here, for example, ROSCO could have chosen to submit a below cost quote that would have made its price more than 20 percent below Wheeler's price. ROSCO, however, does not suggest that it would have done so. This refers to the contracting officer's failure to request a revised quote from it only as an example of DLA's systematic view of the firm as nonresponsible. We therefore see no prejudice accruing to ROSCO as a result of the contracting officer's failure and decline to sustain the protest on this basis.

furtherance of a scheme to treat ROSCO as nonresponsible. Rather, from this record, it appears that DLA simply applied the QVP in accordance with the criteria set forth in the RFQ. To the extent ROSCO is now suggesting that DLA's implementation of the QVP (ROSCO states that it does not challenge the QVP itself) is inconsistent with the Small Business Act because there is no referral to the SBA, the matter is untimely. The QVP provision clearly indicates that the decision to use the QVP and to make award on the basis of a QVP evaluation after a best value analysis is the contracting officer's--if ROSCO objected to that provision, it should have protested by the due date for quotations, see 4 C.F.R. § 21.2(a)(1) (1991), rather than after an award was made.

The protest is denied.


for James F. Hinchman
General Counsel